IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

CRL.A.No. 565 of 1999(C)

ST.3900/1996 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM

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APPELLANT/COMPLAINANT:

E.SUDHAKARAN, S/O. CHAMIKUTTY THARAKAN,
ERATTUTHODI, THIRUVAZHIYODE,
OTTAPPALAM

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS/STATE & ACCUSED:

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1. STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR.

2. P.M. DIVAKARAN NAMBOODIRIPAD,
PERIYANAMPATTA MANA, KOLUKKALLOOR VILLAGE,
MULAYANKAVU, OTTAPPALAM.

BY PUBLIC PROSECUTOR SRI.P. RAVEENDRA BABU -R1
SRI.K.M.SATHYANATHA MENON-R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 565 OF 1999

Dated this the 25th day of May, 2007

JUDGMENT

This appeal is filed against the judgment in S.T.No. 3900 of 1996 on the file of the Judicial First Class Magistrate's Court, Ottappalam.

2. The appellant filed a complaint against the second respondent herein alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. It was the case of the complainant that the second respondent - accused borrowed a sum of Rs.2,00,000/- from him and issued Ext.P1 cheque in discharge of the said liability which when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the second respondent as well as on the basis of a stop payment memo issued by the second respondent. To prove the case against the second respondent, the appellant was examined as PW.2 and two other witnesses were examined as PWs.1 and 3 and Exts.P1 to P10 were produced. On the side of the defence, DWs.1 and 2 were examined and Exts.D1 to D4 were produced. The second respondent

when questioned under Section 313 Cr.P.C. denied the allegations levelled against him and stated that he had given two cheques to Kiran Electronics, Pattambi from where he had purchased a refrigerator on credit basis during 1993 and that even after payment, the cheques were not returned to him and that one of the cheques was misused by the appellant. After trial, the court below found that the appellant failed to prove the case against the second respondent and acquitted him.

3. This Court heard the learned counsel appearing on either side and perused the impugned judgment and the records made available to this Court. The trial court had considered the entire evidence adduced by the appellant and found that the appellant had not proved the transaction between himself and the second respondent which led to the issuance of Ext.P1 cheque. The trial court further found that even though the appellant had stated that he had previous transactions with the second respondent, he could not prove any such transaction by adducing oral or documentary evidence. Further, though the appellant had admitted that the cheque was written and signed in the presence of witness, no such witness was examined. DW.2, the owner of Kiran Electronics, Pattambi had given evidence regarding the sale of a refrigerator. Even though Ext.D2 is a cash bill, that by itself cannot be taken as a ground to believe that the sale

of the refrigerator was on cash basis and not on credit basis. However, relying on Ext.P3 stop payment memo, the trial court found that the cheque in question was drawn from the account of the second respondent during 1993. The trial court thus found that the case set up by the second respondent - accused was more probable and the presumption available to the appellant under Section 113 of the Negotiable Instruments Act has been rebutted. In the above circumstances, this Court is of the view that the impugned judgment requires no interference.

The Crl. Appeal is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.APPEAL NO.565/1999

JUDGMENT

25TH MAY, 2007.